



**COUNCIL OF
THE EUROPEAN UNION**

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REPORT

from:	Presidency
to:	Coreper / Council
Subject:	Common system of value added tax, as regards the treatment of insurance and financial services - Presidency progress report

I. Introduction

1. In November 2007, the Commission submitted two related proposals for Council legal acts as regards the VAT treatment of insurance and financial services (a Directive amending Directive 2006/112/EC on the common system of value added tax and an implementing Regulation), containing three sets of measures:
 - modernisation of the definitions and rules governing exemption from VAT for insurance and financial services;
 - more general application of an option for taxation available to economic operators covering all insurance and financial services;
 - introduction of a cross-border cost-sharing scheme for providers of insurance and financial services.

II. Summary of work carried out under the Slovenian and French Presidencies

2. Discussions on the proposals were launched under the Slovenian Presidency and further progressed during the French Presidency. The efforts of both Presidencies concentrated predominantly on the text of the proposed Directive and, in particular, on the part concerning definitions. Progress achieved on this dossier was reflected in the reports of both Presidencies (doc 9929/08 FISC 66; doc 15793/2/08 REV 2 FISC 156).
3. In December 2008, the Council (Ecofin) requested the future (Czech) Presidency to continue work based on the progress thus far achieved. Furthermore, the Council requested a progress report on the discussions by the end of the first half of 2009.

III. Progress on the dossier

4. The Presidency has continued work and has dealt with all parts of the dossier, namely definitions of insurance and financial services, option for taxation and cost-sharing scheme. In line with the request of the Council, the Presidency has been seeking to lessen the differences in approach and the drafting problems encountered in the discussion together with the detailed examination of the proposal for an implementing Regulation.
5. In order to test the definitions, as amended during the work undertaken during the previous Presidencies, with the examples laid down in the original Commission Regulation the Presidency has drafted single documents matching the relevant parts of both legal proposals, i.e. the Directive and the Regulation. Thereby, the Presidency has focused on the content of both proposals. The structure of the documents has allowed for the examples from the Regulation to be adapted to the latest versions of the definitions accordingly and allows then both proposals being adopted at the same time.

6. In the first Presidency compromise (doc 5162/09 FISC 2), only those examples which were considered important for the purpose of testing the definitions were taken into account. In the second Presidency compromise (doc 7998/09 FISC 36), all possible examples from the original Commission proposal for the Regulation, together with additional relevant examples received from Member States, were examined.
7. As result of the further work on the definitions, the Presidency has improved, in particular, the wording regarding currency exchange and intermediation, created a new separate definition for transfers of debts and claims and adapted the definition of transaction in securities and in interests in companies and associations. The issue of financial deposits has also been discussed in order to establish the relevant business activities that should be covered by this concept. Furthermore, the Presidency has deleted the provisions on bundled supplies which are seen as being too rigid in reflecting all possible business scenarios covering elements of insurance or credits. However, in order to ensure legal certainty in this respect, additional work has been undertaken with regard to the precision of relevant examples on granting of credit.
8. The majority of the definitions now seem to be broadly acceptable although further precision of some examples for the Regulation is still required. However, there are still some important issues remaining, especially as regards the treatment and definition of financial derivatives and the scope of the definition concerning investment funds.
9. As far as the definition of outsourcing and its examples are concerned, the Presidency has suggested that this issue be dealt with in detail at a later stage, once the definitions and the examples of insurance and financial services, to which the outsourcing relates, are agreed.

10. With regard to the option for taxation, the Presidency asked the Member States currently applying it for their practical experience. On the basis of this information, the Presidency has identified major issues in the possible ways forward and has asked for opinions on the direction of future work. Although several approaches have been outlined, the Member States are not yet in a position to agree a road-map for future work. Nevertheless, Member States are interested in exploring further possibilities concerning this measure.
11. The issue of the cost-sharing scheme has been discussed on the basis of the Commission explanatory document stressing, in particular, the reasons for and suggested functioning of the scheme. However, despite the additional information provided the majority of delegations have maintained their rather negative positions, mainly due to the lack of clarity, possible misuse of the scheme and its impact on the current cost-sharing arrangements provided for in Article 132 or on the VAT grouping (Article 11).

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The Council is invited to take note of this report and the progress made to date on the proposal for a Directive and the proposal for a Regulation.